

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

JEFFREY JOHN LOUT,)	CV 05-67-M-DWM
)	
Petitioner,)	
)	
vs.)	ORDER
)	
STATE OF MONTANA, MIKE MAHONEY,)	
Warden, Montana State Prison,)	
JAMES MCDONALD, Warden, Crossroads)	
Correctional Center,)	
)	
)	
Respondents.)	
)	

United States Magistrate Judge Leif B. Erickson entered his Findings and Recommendations in this matter on May 8, 2006 (dkt #19) and May 26, 2006 (dkt #22). Petitioner Lout timely objected to the May 8th Findings and is therefore entitled to de novo review of the record for that filing. 28 U.S.C. § 636(b)(1) (2000). He did not timely object to the May 26th Findings and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the May 26th Findings for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if

the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

Lout filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. He is a state prisoner proceeding *pro se* and *in forma pauperis*. There is no need to recount the factual details of the case as they are familiar to the Parties.

I concur with Judge Erickson's Findings—pursuant to Rule 4 of the 2254 Rules, Lout's Petition cannot pass the preliminary screening because it fails to state a claim for which he is entitled to relief in this Court. Specifically, with the appropriate deference to the State courts under the Antiterrorism and Effective Death Penalty Act of 1996, this Court finds the Montana Supreme Court's holding that Lout's counsel performed adequately and that Lout understood the nature of his guilty plea has not been rebutted by Lout. Despite his Objections, Lout has not presented clear and convincing evidence to overcome the presumption of correctness of the factual findings of the state court. Thus, Lout's claims are meritless.

As to the second set of Findings, the Respondent appropriately responded to the Court's Order regarding the preparation of the transcript for the plea hearing. Lout's point for dismissal is in error.

Accordingly based on the foregoing, IT IS HEREBY ORDERED that Judge Erickson's Findings and Recommendations (dkt #19 and 22) are adopted in full;

IT IS FURTHER ORDERED that Petitioner's Petition (dkt #1) is DENIED.

IT IS FURTHER ORDERED that Petitioner's motion to dismiss (dkt #20) is DENIED. The Clerk is directed to notify the Parties of the entry of this order.

DATED this 4th day of August, 2006.

/s/ Donald W. Molloy
Donald W. Molloy, Chief Judge
United States District Court